IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 256 of 2007
IN
NOTICE OF MOTION NO.1894 OF 2005
IN
SUIT NO. 1713 OF 2005

Vaibhav Enterprises & Anr. .. Appellants
versus
Suresh Maruti More .. Respondent

...

Mr.K.D. Shah for the appellant.

Ms.Swapnali Rane for the respondent.

CORAM : R.M.S. KHANDEPARKAR
AND D.G.KARNIK, JJ

DATED : 9th April 2007.

P.C.:

1. The appellants challenge the order dated 9th March 2007 passed in Notice of Motion no.1894 of 2005 in Suit no.1713 of 2005. By the impugned order, notice of motion taken out by the respondent has been made absolute in terms of prayer clauses (a) and (b). The prayer clauses (a) and (b) read thus:

(a) that pending the hearing and final

disposal of the suit the defendants by themselves, their partners, servants, agents and dealers be restrained by an order and injunction of this Hon'ble Court from infringing the Plaintiffs registered design nos.183358 and 180432 by using in relation to their goods as shown in Exhibit H and I annexed to the Plaint or any other design deceptively similar to that manufactured by the Plaintiffs.

(b) that pending the hearing and final disposal of the suit the Court Receiver, High Court, Bombay be appointed under Order XL, Rule 1 of the Code of Civil Procedure, Code, 1908, as the receiver of the defendants goods which are the exact imitation to that of the Plaintiffs as Exhibit C and D annexed to Plaint, with all powers to enter in the premises of the defendants and/or their agents distributors, stockiest and/or dealers at any time day or night without notice to the Defendants and with the help of the police if necessary, to search, seize and

> take charges, possession and control the imitated/infringed goods at Exhibits H and I annexed to Plaint as well as machinery, dyes and moulds used for the manufacturing activity and in possession of the defendants and/or their agents, distributors and stockiest and/or dealers."

2. The findings arrived at by the learned Single Judge clearly disclose that in relation to design no.180432, the defence sought to be raised by the appellants was that they had acquired copy-right in that design by getting their design registered. In case of design no.183358, the defence was in fact that there was no novelty in that design and that the design is commonly used in the market.

3. The learned Single Judge,on consideration of the materials on record, has found that the registration in relation to design no.180432 is in the name of Vithal Soma Gawde, who is father of the appellant no.2 herein. Undisputedly, the father of the appellant no.2 is living. Consequently, the

appellants are not entitled to claim any benefit under the said registration certificate which was granted in favour of the father of the appellant no.2 and therefore, the learned Single Judge has denied the relief asked for by the appellants.

4. As regards the design no.183358, the learned Single Judge has held that the appellants have failed to produce any material on record to show that for similar seals manufactured by the persons whose names are disclosed in the affidavit are either freely available in the market or anything is disclosed as regards the volume of business done by the parties in that regard.

5. As regards the failure on the part of the appellants to produce any evidence in support of the contention about the absence of novelty in relation to design no.183358, it was sought to be contended on behalf of the appellants that the necessary material was attempted to be shown to the learned Single Judge. However, perusal of the affidavit filed clearly disclose that though the appellants in no uncertain terms, had sought leave to rely upon the materials in relation to the contention about the absence of

novelty in relation to the said design, actually no material was produced on record. The Learned advocate for the appellants has admitted that the appellants did not produce any explanation about the absence of novelty dealing with any design. Obviously, no fault can be found in the observations made by the learned Single Judge in relation to the failure on the part of the appellant to establish absence of novelty in relation to design no.183358.

6. Similarly, it is not in dispute that in relation to design no.180432, the defence of registration in favour of such design claimed by the appellant is in favour of his father who is living and being so, the findings arrived at by the learned Single Judge about the non entitlement of the appellants to claim benefit under the said design cannot be found fault with.

7. For the reasons stated above, we do not find any case being made out for interference in the impugned order and hence the appeal fails and is dismissed.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)